

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Jennifer M. Castle
SSN XXX-XX-7192

CHAPTER 13 CASE

CASE NO. 03-38222 DDO

Debtor.

NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY

TO: Debtor and other entities specified in Local Rule 9013-3(a).

1. Aurora Loan Services, Inc. (hereinafter "Secured Creditor"), by its undersigned attorney moves the Court for the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion on October 20, 2004, at 9:30 a.m., or as soon thereafter as counsel can be heard, before the Honorable Dennis D. O'Brien in Courtroom 228A of the above entitled Court located at U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota.

3. Any response to this motion must be filed and delivered not later than October 15, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or served and filed by mail not later than October 11, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this case was filed on December 5, 2003. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. § 362 and Federal Rule of Bankruptcy Procedure 4001. This motion is filed under Federal Rule of Bankruptcy Procedure 9014 and Local Rules 9013-1 - 9019-1.

Movant requests relief from the automatic stay with respect to property subject to a lien. Movant requests said relief be effective immediately notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3).

6. Debtor is indebted to Secured Creditor in the original principal amount of \$165,905.00, as evidenced by that certain Promissory Note dated January 31, 2003, a copy of which is attached hereto as Exhibit "A", together with interest thereon.

7. Debtor's indebtedness is secured by a mortgage on real estate in which Debtor has an interest as evidenced by that certain mortgage deed dated January 31, 2003, executed by Jennifer M. Castle, a single person, a copy of which is attached hereto as Exhibit "B". The name and address of the original creditor is contained in the attached Exhibit "B". The property is located in Sherburne County, Minnesota and is legally described as follows to-wit:

Lot 12, Block 2, Autumn Woods, Sherburne County, MN.

Secured Creditor is now the holder of said mortgage and is entitled to enforce the terms thereof.

8. At all times material, Debtor was in default of the payments and performance of obligations to Secured Creditor.

9. Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. This secured creditor's interest in the property is not adequately protected where, as of September 28, 2004, Debtor is delinquent in the making of post-petition monthly payments as required for the months of May, 2004 through September, 2004, inclusive, in the amount of \$1,307.17 each for the months of May, 2004 through July, 2004 and \$1,458.98 each for the months of August, 2004 through September, 2004; accruing attorneys fees and costs of \$700.00. Debtor has failed to make any offer of adequate protection.

10. Debtor has no equity in the property and the property is not necessary to an effective reorganization. The value of the property as scheduled by Debtor is \$167,900.00 subject to Secured Creditor's mortgage in excess of \$177,308.44.

The burden is on Debtor to establish that this property is necessary to an effective reorganization.

11. Secured Creditor desires to protect its interest in the aforementioned property and requests the Court to vacate the stay of actions and allow foreclosure pursuant to Minnesota law.

12. Secured Creditor has incurred and will incur legal fees and costs to protect and enforce its rights in the subject property.

WHEREFORE, Secured Creditor, by its undersigned attorney, moves the Court for an order for judgment that the automatic stay provided by 11 U.S.C. § 362(a) be modified so to permit the movant to commence mortgage foreclosure proceedings under Minnesota law and for such other relief as may be just and equitable.

Dated this 28th day of September, 2004.

WILFORD & GESKE

By /e/ James A. Geske

James A. Geske
Attorneys for Secured Creditor
7650 Currell Blvd., Ste 300
Woodbury, MN 55125
651-209-3300
Attorney Reg. No. 14969X

THIS COMMUNICATION IS FROM A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

LOAN NO. 00030070

ADJUSTABLE RATE NOTE

(LIBOR Index - Rate Cap)

15030349

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. THIS NOTE LIMITS THE AMOUNT MY INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.

JANUARY 31, 2003
(Date)

ELK RIVER
(City)

30260 118TH ST
PRINCETON, MN 55678
(Property Address)

WE CERTIFY THIS TO BE A TRUE
AND CORRECT COPY OF THE ORIGINAL
(Signature)

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 165,905.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is MARIBELLA MORTGAGE, LLC.

I will make

all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 8.375 %. The interest rate I will pay may change in accordance with Section 4 of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

3. PAYMENTS**(A) Time and Place of Payments**

I will pay principal and interest by making a payment every month.

I will make my monthly payments on the first day of each month beginning on MARCH 1, 2003. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on FEBRUARY 1, 2033, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at

3600 MINNESOTA DR #160, EDINA, MN 55435

or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. \$ 1,261.00. This amount may change.

(C) Monthly Payment Changes

Changes in my monthly payment will reflect changes in the unpaid principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 of this Note.

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES**(A) Change Dates**

The interest rate I will pay may change on the first day of FEBRUARY, 2005, and on that day every sixth month thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an index. The "Index" is the average of interbank offered rates for six-month U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in *The Wall Street Journal*. The most recent index figure available as of the first business day of the month immediately preceding the month in which the Change Date occurs is called the "Current Index."

If the index is no longer available, the Note Holder will choose a new index which is based upon comparable information. The Note Holder will give me notice of this choice.

MULTISTATE ADJUSTABLE RATE NOTE (LIBOR Index) - Single Family - Freddie Mac UNIFORM INSTRUMENT Form 3390 1/01

PMAC3390 (11/00)

Page 1 of 4

Initial JC

Initial _____

EXHIBIT A

THIS IS A TRUE
 AND CORRECT COPY OF THE ORIGINAL
 UNIVERSAL-TITLE

LOAN NO.: 00030070

(Space Above Title Line for Recording Detail)

MORTGAGE

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated **JANUARY 31, 2003** together with all Riders to this document.

(B) "Borrower" is
JENNIFER M CASTLE, A SINGLE PERSON

Borrower is the mortgagor under this Security Instrument.
 (C) "Lender" is **MARIBELLA MORTGAGE, LLC.**

Lender is a
 organized and existing under the laws of **THE STATE OF MINNESOTA**
 Lender's address is **3600 MINNESOTA DR. STE. 160**
EDINA, MIN 55435

Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated **JANUARY 31, 2003**
 The Note states that Borrower owes Lender

ONE HUNDRED SIXTY-FIVE THOUSAND NINE HUNDRED FIVE AND 00/100
Dollars (U.S. \$ 165,905.00) plus interest. Borrower has promised to pay this debt in regular
 Periodic Payments and to pay the debt in full not later than **FEBRUARY 1, 2033**

(E) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(F) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

MINNESOTA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
 Form 3024 1/03
 Lender Forms Inc. (800) 448-3855
 161 #TMA3024 1/03 (A)

Page 1 of 13

Initials: JC

EXHIBIT B

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witnesses:

JENNIFER M CASTLE (Seal)
Borrower

(Seal)
Borrower

(Seal)
Borrower

(Seal)
Borrower

(Sign Below This Line For Acknowledgment)
STATE OF MINNESOTA, SHERBURNE County/ ss:

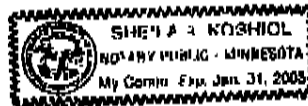
On this 31ST day of JANUARY, 2003, before me appeared
JENNIFER M CASTLE, A SINGLE PERSON

to me personally known to be the person(s) described in and who executed the foregoing instrument; and acknowledged that he/she/they executed the same as his/her/their free act and deed.

Notary Public

My Commission expires:

This instrument was prepared by:
MARIBELLA MORTGAGE, LLC
3600 MINNESOTA DRIVE SUITE 100
EDINA, MN 55435
1-952-844-0100



Tax statement sent to:

MINNESOTA - Single Family - Female Man/Fredella Mac UNIFORM INSTRUMENT
Form 3024 1/01
Lender Forms Inc. (800) 446-3333
LFI #FIMA3024 1/01

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Jennifer M. Castle
SSN XXX-XX-7192

CHAPTER 13 CASE

CASE NO. 03-38222 DDO

Debtor.

**MEMORANDUM IN SUPPORT OF
MOTION FOR RELIEF FROM STAY**

ARGUMENT

I. CAUSE EXISTS FOR THE GRANTING OF RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)(1) WHERE THE INTEREST OF THIS SECURED CREDITOR IS NOT ADEQUATELY PROTECTED.

Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. Secured Creditor's interest in the property is not adequately protected where:

1. As of September 28, 2004, Debtor is delinquent for post-petition monthly payments as required for the months of May, 2004 through September, 2004, in the amount of \$1,307.17 each for the months of May, 2004 through July, 2004 and \$1,458.98 each for the months of August, 2004 through September, 2004; accruing attorneys fees and costs of \$700.00.

2. Debtor has failed to make any offer of adequate protection.

Furthermore, Debtor has failed to meet its contractual obligations to make payments as they become due after the filing of the bankruptcy petition, which failure constitutes "cause" entitling the Secured Creditor to relief from the automatic stay under 11 U.S.C. § 362(d)(1). A continued failure by Debtor to maintain regular payments to Secured Creditor is sufficient cause to entitle Secured Creditor to relief from the automatic stay. See In re Taylor, 151 B.R. 646 (E.D.N.Y., 1993) and In re Davis, 64 B.R. 358 (Bkrcty. S.D.N.Y., 1986).

II. THE AUTOMATIC STAY SHOULD BE MODIFIED PURSUANT TO 11 U.S.C. § 362(d)(2) WHERE (1) DEBTOR DOES NOT HAVE ANY EQUITY IN THE PROPERTY, AND (2) THE PROPERTY IS NOT NECESSARY TO AN EFFECTIVE REORGANIZATION.

The first requirement under § 362(d)(2) is met where the total of all the encumbrances against the property is in excess of the value of the property. The value of the property as scheduled by Debtor is \$167,900.00 subject to Secured Creditor's mortgage in excess of \$177,308.44.

The burden is on Debtor to establish that this property is necessary to an effective reorganization.

CONCLUSION

Secured Creditor is entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) for cause, and where its interest in the secured property is not adequately protected. Secured Creditor is also entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(2) where Debtor has no equity in the property, and where the property is not necessary to an effective reorganization.

Secured Creditor respectfully requests an order of this Court modifying the automatic stay consistent with the attached proposed Order.

Dated this 28th day of September, 2004.

WILFORD & GESKE

By /e/ James A. Geske
James A. Geske
Attorneys for Secured Creditor
7650 Currell Blvd., Ste 300
Woodbury, MN 55125
651-209-3300
Attorney Reg. No. 14969X

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 13 CASE

Jennifer M. Castle
SSN XXX-XX-7192

CASE NO. 03-38222 DDO

**AFFIDAVIT OF
MECHELLE ALLBAUGH**

Debtor.

Mechelle Allbaugh, being first duly sworn on oath, deposes and states:

1. That she is the Bankruptcy Specialist of Aurora Loan Services, Inc.

2. Aurora Loan Services, Inc., is now the holder of a mortgage on real property in which the debtor has an interest. The debtor's indebtedness is evidenced by that certain mortgage deed dated January 31, 2003, executed by Jennifer M. Castle, a single person. The property is located in Sherburne County, Minnesota and is legally described as follows, to-wit:

Lot 12, Block 2, Autumn Woods, Sherburne County, MN.

3. That she has reviewed the account records relating to the Castle mortgage loan, account no. 0015030349.

4. That as of September 16, 2004, the following amounts were owing on this account:

Unpaid Principal:	\$164,877.69
Interest through September 16, 2004	12,106.24
Attorney's Fees:	700.00
Debtor Suspense (-):	(375.49)

TOTAL:	\$177,308.44
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5. That the mortgage loan is delinquent for monthly mortgage payments for the months of May, 2004 through September, 2004 in the amount of \$1,307.17 each. *5/04 - 7/04 at 1307.17*

6. This affidavit is given in support of the motion of Aurora Loan Services, Inc. for relief from the automatic stay. *8/04 - 9/04 at 1488.98*

AURORA LOAN SERVICES, INC.

By *Mechelle Allbaugh*
Its Bankruptcy Specialist

Subscribed and sworn to before me
this 17 day of September, 2004.

Michelle Rene Johnston
Notary Public



**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Jennifer M. Castle
SSN XXX-XX-7192

CHAPTER 13 CASE

CASE NO. 03-38222 DDO

Debtor.

**UNSWORN DECLARATION
FOR PROOF OF SERVICE**

Joanna Cheyka, employed by Wilford & Geske, attorneys licensed to practice law in this Court, with office address at 7650 Currell Blvd., Ste 300, Woodbury, Minnesota, declares that on September 28, 2004, I served the annexed Notice of Hearing and Motion for Relief from Stay, Memorandum in Support of Motion for Relief, Affidavit of Mechelle Allbaugh, and proposed Order to each person referenced below, a copy thereof by enclosing the same in an envelope with first class mail postage prepaid and depositing the same in the post office at Woodbury, Minnesota addressed to each of them as follows:

Jennifer M. Castle
30260 118th St
Princeton, MN 55371

Michael J. Farrell
PO Box 519
Barnesville, MN 56514

Gregory J. Wald
3601 Minnesota Dr Ste 800
Edina, MN 55435

U.S. Trustee
1015 U.S. Courthouse
300 South 4th Street
Minneapolis, MN 55415

Aurora Loan Service, Inc.
c/o Moss, Codilis, Stawiarski et al
PO Box 1469
Scottsbluff, NE 69363-1469

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated this 28th day of September, 2004.

/e/ Joanna Cheyka
Joanna Cheyka

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Jennifer M. Castle
SSN XXX-XX-7192

CHAPTER 13 CASE

CASE NO. 03-38222 DDO

Debtor.

ORDER

The above entitled matter came on for hearing upon motion of Aurora Loan Services, Inc. (hereinafter "Secured Creditor"), pursuant to 11 U.S.C. § 362 on October 20, 2004, at U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota. Appearances were as noted in the record. The Chapter 13 Trustee filed her Report of Standing Trustee in response to this motion. Based upon the evidence adduced at said hearing, the arguments of counsel, and the Court being fully advised of the premises,

IT IS HEREBY ORDERED that Secured Creditor, its assignees and/or successors in interest, is granted relief from the stay of actions imposed by 11 U.S.C. § 362 with regard to that certain mortgage deed dated January 31, 2003, executed by Jennifer M. Castle, a single person, covering real estate located in Sherburne County, Minnesota, legally described as follows, to-wit:

Lot 12, Block 2, Autumn Woods, Sherburne County, MN

and may pursue its remedies under state law in connection with the subject note and mortgage deed.

Notwithstanding Federal Rule of Bankruptcy Procedure

4001(a)(3), this Order is effective immediately.

Dated: _____

Judge of Bankruptcy Court